

## **BOARD OF ZONING APPEALS**

### **Minutes**

**December 16, 2003**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas was held at 1:30 p.m. on December 16, 2003, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance:

JAMES RUANE, JOHN ROGERS, ERMA MARKHAM, BICKLEY FOSTER,  
DWIGHT GREENLEE, AND JAMES SKELTON, and RANDY PHILLIPS in at 1:39 p.m.

SHARON DICKGRAFE -- Law Department present.

HERB SHANER -- Office of Central Inspection present.

The following Planning Department staff members were present:

SCOTT KNEBEL Assistant Secretary.

ROSE SIMMERING, Recording Secretary.

RUANE Item #1, November 18, 2003, BZA meeting minutes.

**GREENLEE moves, MARKHAM seconds to approve November 18, 2003, BZA meeting minutes.**

**Motion Carries 6-0.**

RUANE Item #2, Case No., BZA2003-65, Request a Variance to reduce the street side setback along Munnell from 20 feet to 7 feet and the front setback along Glenn from 25 feet to 12 feet on property zoned "MF-29" Multi-family Residential, generally located at the southwest corner of Munnell and Glenn. Applicant Westside Church of God Trustees.

KNEBEL, Planning staff Presents staff report and slides. Staff recommends approval, subject to conditions, in the following report:

CASE NUMBER:	BZA2003-00065
OWNER/APPLICANT:	West Side Church of God c/o Donald L. Wagner
AGENT:	n/a
REQUEST:	Variances to reduce the front building setback along Glenn from 25 feet to 12 feet and to reduce the street side setback along Munnell from 20 feet to 7 feet
CURRENT ZONING:	"MF-29" Multi-Family Residential
LOCATION:	Southwest corner of Munnell and Glenn

**JURISDICTION:** The Board has jurisdiction to consider the variance request under the provisions outlined in Section 2.12.590.B, Code of the City of Wichita. The Board may grant the request when all five conditions, as required by State Statutes, are found to exist.

**BACKGROUND:** The applicant is proposing to demolish three existing houses on the subject property and construct a multipurpose building to serve the West Side Church of God, which is located immediately south of the subject property at 1900 W. McCormick. The subject property is located at the southwest corner of Munnell and Glenn and is zoned "MF-29" Multi-Family Residential.

The multi-purpose building is proposed to be set back 12 feet from Glenn and 7 feet from Munnell. The zoning regulations for the “MF-29” Multi-Family Residential zoning district require a 25-foot front building setback along Glenn and a 20-foot street side building setback along Munnell. Therefore, the applicant is requesting variances to reduce the front building setback along Glenn from 25 feet to 12 feet and to reduce the street side setback along Munnell from 20 feet to 7 feet.

A reduction of building setbacks by greater than 20% requires a variance. The zoning regulations also allow “setback averaging” whereby the front building setback can be reduced to a distance equal to the average building setback of the existing structures within the same block and on the same side of the street. However, the setback averaging provisions for residentially zoned property do not permit including non-residential structures when calculating the average setback, and since the only structure other than the houses to be demolished within the block is a church, a variance is required to permit the proposed setback along Glenn. Also, the setback averaging provisions do not permit the reduction of a street side setback; therefore, a variance is required to permit the proposed setback along Munnell.

The applicant proposes the 12-foot setback along Glenn and 7-foot setback along Munnell to match the setback of the existing church to the south along Glenn and existing houses to the west along Munnell. The applicant also indicates that reduced setbacks are needed to preserve as much land as possible for parking and for an annual living nativity held in the parking lot each Christmas. The applicant submitted the attached justification outlining how the requests meets the requirements for granting the variances. The applicant also submitted the attached site plan illustrating the proposed multipurpose building and reduced setbacks.

**ADJACENT ZONING AND LAND USE:**

NORTH	“MF-29”	Single-family
SOUTH	“LC”	Church
EAST	“MF-29”	Single-family
WEST	“MF-29”	Single-family

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the property is located in an area where the existing structures were constructed under zoning regulations that required significantly less setbacks that currently required. Over the years the zoning regulations have changed to require a 25-foot front and 20-foot street side setback for the subject property; however, the overwhelming majority the structures in this area (and none of the structures within this block) do not provide such setbacks.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variances requested would not adversely affect the rights of adjacent property owners, inasmuch as the new structure would be internal to the subject property. No additional encroachment would occur along the north and east boundaries of the subject property that is in excess of the placement of the existing structures within the block.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the 25-foot front and 20-foot street side setbacks are a change to the zoning regulations since the property was originally developed and requiring conformance with current regulations would significantly limit the ability to redevelop the property.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variances would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the building setbacks and therefore there will be no adverse effect on the general public.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variances requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access.

**RECOMMENDATION:** Should the Board determine that conditions necessary grant the variances exist, then it is the recommendation of the Secretary that variances to reduce the front building setback along Glenn from 25 feet to 12 feet and to reduce the street side setback along Munnell from 20 feet to 7 feet be GRANTED, subject to the following conditions:

1. Development of the subject property shall comply with all building, zoning, and landscape code requirements, except that the front building setback along Glenn shall be reduced from 25 feet to 12 feet and the street side setback along Munnell shall be reduced from 20 feet to 7 feet.
2. The applicant shall obtain all permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
3. The resolution authorizing this variances may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

RUANE The other structures within this square block will all have the setback requirement that is consistent with the other residential structures and the church?

KNEBEL Yes. (shows on the aerial)

MARKHAM In other words the building they are going to build will be lined up with the old structure?

KNEBEL It will be lined up with this house (shows on aerial).

FOSTER Part of the applicant mentioned the need for the setback because of the display area?

DONALD L. WAGNER, 1623 Mesa, Wichita, KS 67212 Yes, since 1962 the church holds the nativity, and it is 54 panels, and it is a pretty good size nativity set. Currently we run it down the building and across the parking lot. Now with this setback if we can get the building lined up with these buildings here it will allow more room for the nativity set.

FOSTER You own the house next door? And all the other adjacent land?

WAGNER No.

FOSTER The area between and the house? You own all that?

WAGNER Yes.

FOSTER But the land west of the house.

WAGNER It is a parking lot.

KNEBEL The application area is just a portion of the ownership that is impacted by the new building.

ROGERS I agree with staff recommendation.

**ROGERS MOVES MARKHAM SECONDS THAT THE BOARD ACCEPT THE FINDINGS OF FACT AS SET FORTH IN THE SECRETARY'S REPORT; AND THAT ALL FIVE CONDITIONS SET OUT IN SECTION 2.12.590(b) OF THE CITY CODE AS NECESSARY FOR THE GRANTING OF A VARIANCE HAVE BEEN FOUND TO EXIST AND THAT THE VARIANCE BE GRANTED SUBJECT TO THE CONDITIONS SET OUT IN BZA RESOLUTION NO. BZA2003-00065.**

**Motion carries 7-0, and the Board adopts the following resolution:**

**BZA RESOLUTION NO. 2003-00065**

**WHEREAS**, West Side Church of God (owner/applicant); %Donald L. Wagner, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests Variances to reduce the front building setback along Glenn from 25 feet to 12 feet and to reduce the street side setback along Munnell from 20 feet to 7 feet on property zoned "MF-29" Multi-family Residential and legally described as follows:

The North 50 feet of the East 128 feet of Lot 6, Glenn Avenue, Lawnfield Addition to Wichita, Sedgwick County, Kansas; and The South 50 feet of the East 128 feet of Lot 6, Glenn Avenue, Lawnfield Addition to Wichita, Sedgwick County, Kansas; and The North 50 feet of the East 128 feet of Lot 4, Glenn Avenue, Lawnfield Addition to Sedgwick County, Kansas. Generally located at the southwest corner of Munnell and Glenn.

**WHEREAS**, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS**, the Board of Zoning Appeals did, at the meeting of December 16, 2003, consider said application; and

**WHEREAS**, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique. It is the opinion of the Board that this property is unique, inasmuch as the property is located in an area where the existing structures were constructed under zoning regulations that required significantly less setbacks that currently required. Over the years the zoning regulations have changed to require a 25-foot front and 20-foot street side setback for the subject property; however, the overwhelming majority the structures in this area (and none of the structures within this block) do not provide such setbacks.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of the Board that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the new structure would be internal to the subject property. No additional encroachment would occur along the north and east boundaries of the subject property that is in excess of the placement of the existing structures within the block.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of the Board that the strict application of the provisions of the Zoning Code constitutes an unnecessary hardship upon the applicant, inasmuch as the 25-foot front and 20-foot street side setbacks are a change to the zoning regulations since the property

was originally developed and requiring conformance with current regulations would significantly limit the ability to redevelop the property.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of the Board that the requested variance would not adversely affect the public interest, inasmuch as there will be no encroachments into public utility easements or street right-of-way as a result of this reduction of the building setbacks and therefore there will be no adverse effect on the general public.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of the Board that the granting of the variance requested would not oppose the general spirit and intent of the Sign Code inasmuch as the reduced setbacks will continue to provide for fire protection, separation, light and air circulation, and pedestrian access.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals, pursuant to Section 2.12.590.B, Code of the City of Wichita, that Variances be granted to reduce the front building setback along Glenn from 25 feet to 12 feet and to reduce the street side setback along Munnell from 20 feet to 7 feet on property zoned “MF-29” Multi-family Residential and legally described as follows:

The North 50 feet of the East 128 feet of Lot 6, Glenn Avenue, Lawnfield Addition to Wichita, Sedgwick County, Kansas; and The South 50 feet of the East 128 feet of Lot 6, Glenn Avenue, Lawnfield Addition to Wichita, Sedgwick County, Kansas; and The North 50 feet of the East 128 feet of Lot 4, Glenn Avenue, Lawnfield Addition to Sedgwick County, Kansas. Generally located at the southwest corner of Munnell and Glenn.

**The variances are hereby GRANTED, subject to the following conditions:**

1. Development of the subject property shall comply with all building, zoning, and landscape code requirements, except that the front building setback along Glenn shall be reduced from 25 feet to 12 feet and the street side setback along Munnell shall be reduced from 20 feet to 7 feet.
2. The applicant shall obtain all permits necessary to construct the indicated improvements, and all improvements shall be completed within one year following the BZA approval of the variance unless such time period is extended by the BZA.
3. The resolution authorizing this variances may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**ADOPTED AT WICHITA, KANSAS, this 16th DAY of DECEMBER 2003.**

HERB SHANER Item 3, I have no report this month.

FOSTER I notice in the newsletter of the Kansas Chapter of American Planning Association is that there is going to be an audio conference on February 18th and this one exams the BZA and how it functions better I would suggest that we have notification sent to us as a Board.

KNEBEL Planning staff will add the BZA Board to the notification list of those audio conferences.

**MEETING adjourned 1:51 p.m.**